

WISCONSIN SUPREME COURT CALENDAR
April 9, 2002
11 a.m.

This case will be
heard in Appleton for
Justice on Wheels

00-3258 Karl Burg by his legal guardian, Gladys Weichert v. Cincinnati Casualty
Ins. Co. and Robert W. Zimmerman et al.

*This is a review of a decision of the Wisconsin Court of Appeals, District I
(headquartered in Milwaukee), which reversed a judgment of the Milwaukee County
Circuit Court, Judge Michael G. Malmstadt presiding.*

In this case, the Wisconsin Supreme Court will decide whether sitting on a snowmobile at night with the motor, headlights, and taillights off constitutes “operating” the snowmobile under Wisconsin law. In making this decision, the Court will interpret the meaning of the following:

Wisconsin Statutes §350.09 (1)

Any snowmobile operated during the hours of darkness ... shall display a lighted headlamp and taillamp.

Here is the background: About an hour after sunset on Nov. 29, 1995, Karl Burg and a companion were driving snowmobiles on two snow-covered gravel lanes parallel to Highway 36 in Racine County. Slated to be an addition to the highway, these lanes were under construction and were not yet open to automobile traffic. Robert W. Zimmerman and a friend, Dean Leighton, were also snowmobiling in these lanes and decided to stop, turn off their motors, and talk. Their snowmobiles, snowmobile suits, and helmets were all black and the headlights and taillights went out when they cut the motors.

By the time Burg and his friend saw Zimmerman and Leighton, it was too late to avoid a crash. Burg swerved to avoid Zimmerman’s snowmobile, struck Leighton’s snowmobile, was thrown 40 feet, and sustained a brain injury. He has permanent impairments as a result.

Burg sued Zimmerman and Zimmerman’s insurer, Cincinnati Casualty Insurance Co., alleging negligence and citing the statute that is reprinted above. Burg’s attorney asked the trial court to declare that Zimmerman was negligent, but the court declined to do that. The judge found that Zimmerman had not been “operating” the snowmobile at the time of the accident under the meaning of the statute. In making this ruling, the judge said:

I think the law is stupid, but I’m stuck with what the law is. You know, I think when two people park their snowmobile[s] out there and are sitting around talking about what route they’re going to take, it’s hard for me to comprehend how the law can say that’s not operating, but it does.

Burg then attempted to convince the judge that Zimmerman could be found negligent under another state statute:

Wisconsin Statutes §346.51

(1) No person shall park, stop or leave standing any vehicle*, whether attended or unattended, upon the roadway** of any highway ... when it is practical to park, stop or leave such vehicle standing off the roadway, but even the parking, stopping or standing of a vehicle off the roadway of such highway is unlawful unless the following requirements are met:

(b) Such standing vehicle must be capable of being seen by operators of other vehicles from a distance of 500 feet in each direction along such highway.

*Another section of this statute makes it clear that “vehicle” includes snowmobiles.

**The statute defines “roadway” as “that portion of a highway between the regularly established curb lines or that portion which is improved, designed or ordinarily used for vehicular travel, excluding the berm or shoulder.”

The judge declined this motion, and the case went to the jury, which found that neither Zimmerman nor Leighton had been negligent and that Burg was solely responsible for his injuries.

Burg appealed, and the Court of Appeals (with Judge Patricia Curley dissenting) reversed the trial court and sent the case back for a new trial. The majority of the Court of Appeals found that the statutes do support a conclusion that sitting on a snowmobile in a snowmobile lane in the dark, with motor and lights off, constitutes “operating” the snowmobile.

The Supreme Court will decide whether Zimmerman was “operating” his snowmobile under the meaning of the statute.